

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

MARCUS CLEMMONS,

Petitioner,

v.

Case Number: 08-CV-11359  
HON AVERN COHN

THOMAS BELL,

Respondent.

/

**ORDER DENYING A CERTIFICATE OF APPEALABILITY**

I.

This is a habeas case under 28 U.S.C. § 2254. Petitioner Marcus Clemons, proceeding pro se, is a state inmate at the Bellamy Creek Correctional Facility in Ionia, Michigan. Following a jury trial in Saginaw County circuit court, Petitioner was found guilty of (1) second-degree murder, (2) four counts of assault with intent to commit murder, (3) two counts of felony firearm, (4) one count of felon in possession, and (5) one count of carrying a concealed weapon. He was sentenced to (1) life in prison for the second-degree murder conviction, (2) thirty-five to sixty years in prison for the four counts of assault with intent to murder convictions, (3) the mandatory two years in prison for the two counts of felony-firearm convictions, (4) three to seven years for the felon in possession conviction, and (5) three to seven years for the carrying a concealed weapon conviction.

Petitioner filed an application for a writ of habeas corpus, raising claims concerning prosecutorial misconduct, violations under the Confrontation Clause, improper jury instructions, and the trial court's failure to grant him a new trial based on newly discovered DNA evidence. The Court denied the petition for lack of merit. See Memorandum and Order Denying Petition for Writ of Habeas Corpus, filed October 14, 2009.

On October 29, 2009, Petitioner filed a notice of appeal which is signed and dated October 23, 2009.

## II.

Before Petitioner can appeal the Court's decision, a certificate of appealability (COA) must issue. See 28 U.S.C. § 2253(c)(1) and Fed. R. App. P. 22(b). A COA may be issued "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). In Slack v. McDaniel, 529 U.S. 473, 120 S. Ct. 1595 (2000), the United States Supreme Court held that where, as here, a petition is rejected on the merits, "the petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." 120 S. Ct. at 1604. The Supreme Court has also explained that "[t]his threshold inquiry does not require full consideration of the factual or legal bases adduced in support of the claims." Miller-El v. Cockrell, 123 S.Ct. 1029, 1039 (2003). "A prisoner seeking a COA must prove 'something more than the absence of frivolity' 'or the existence of mere good faith on his or her part.'" A prisoner need not prove that "some jurists would grant the petition for habeas corpus .... a claim can be debatable even though every jurist of reason might agree, after the COA has been granted and the

case has received full consideration, that petitioner will not prevail." Id. at 1040.

In this Circuit, the Court must make an individualized determination of each claim raised in the petition in considering whether or not to grant a COA. See Murphy v. State of Ohio, 263 F.3d 466 (6<sup>th</sup> Cir. 2001) (per curiam). Moreover, where, as here, a petitioner files a notice of appeal, the Court must issue a order granting or denying a COA. Castro v. United States, 310 F.3d 900 (6<sup>th</sup> Cir. 2002) (per curiam).

III.

In the October 14, 2009 memorandum, the Court examined all of Petitioner's claims regarding prosecutorial misconduct, Confrontation Clause, jury instructions, and DNA evidence and concluded that they lacked merit. Reasonable jurists would not debate these conclusions. Accordingly, a COA is DENIED.

SO ORDERED.

s/Avern Cohn  
\_\_\_\_\_  
AVERN COHN  
UNITED STATES DISTRICT JUDGE

Dated: November 4, 2009

I hereby certify that a copy of the foregoing document was mailed to Marcus Clemons, 454920, Gus Harrison Correctional Facility, 2727 E. Beecher Street Adrian, MI 49221 and the attorneys of record on this date and the attorneys of record on this date, November 4, 2009, by electronic and/or ordinary mail.

s/Julie Owens  
\_\_\_\_\_  
Case Manager, (313) 234-5160